

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
SEPTEMBER 22, 2011**

PRESENT: Jeffrey Cohen, Chair; Brian Gildea, Vice Chair; Kenneth Gordon; Stephen Henning

ABSENT: Jeffrey Dearing, Vice Chair; Angelo Colasante; Carol Amick

GUEST: Walter St. Onge, Selectmen Liaison

Mr. Cohen introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and ZBA assistant introduced themselves.

Mr. Cohen explained that there will only be a four-member Board for this hearing, which means that there is a voting quorum, but any vote to approve the requested zoning relief must be unanimous. He said that in this situation the Board always allows the applicants the option of continuing to another night when a five-member quorum might be present, at which time the zoning relief would be granted even with one dissenting vote out of the five.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #007-12 – Charles Freni, 31 Hayden Lane, seeks a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct garage addition within side yard setback.

Mr. Freni introduced himself and his wife, Joan-Marie, and stated that they would like to proceed tonight with a four-member quorum. He explained that they are hoping to construct a second bay for their garage. He said that the plot plan and plans for the garage are included in the application packet.

Mr. Cohen asked how close the addition will be to the side lot line. Mr. Freni said that his measurements show that the closest the addition will be to the side lot line is 8 feet, although it slants at an angle so the opposite end of the garage would be 15 feet from the line.

Mr. Gildea asked how certain Mr. Freni is that the garage will be 8 feet from the lot line. Mr. Freni replied that he is reasonably sure. Mr. Gildea said that the Building Inspector will hold him to that number, and if it encroaches any farther into the setback, he will have to return to the ZBA to amend the Special Permit. Mr. Freni said the contractor measured this certified plot plan with a scale so he believes it is accurate as it could be. There was discussion about whether the Board wanted a condition on the Special Permit requiring an as-built foundation plan before the foundation is poured. Mr. Cohen said that should be an automatic requirement from the Building Department anyway so he doesn't believe such a condition is necessary.

Mr. Freni explained that the only problem he can see arising with this project is that the sewer line from the house runs near that area, so the line may have to be moved. Mr. Cohen stated that if the line is moved, it will be under the purview of the Department of Public Works (DPW), but if this causes any change to the design or dimensions of the garage, the applicants will have to let the Building Department know.

There was discussion about the aesthetics of the garage; Mr. Freni said the façade will be consistent with that of the existing house and will look very attractive.

Mr. Cohen opened the hearing to the public. With no questions or comments from those in attendance, Mr. Cohen closed the public hearing.

DELIBERATIONS:

Mr. Cohen stated that this project clearly requires a Special Permit due to insufficient frontage and lot area. He said that the two requirements of a Special Permit are that the project is not injurious or detrimental to the neighborhood and is in keeping with the intent and purpose of the By-Law. He noted that eight feet is just on the line of where he feels comfortable, as it is approaching halfway into the allowable setback, but he feels this project meets the required Special Permit conditions and he is comfortable with this request.

Mr. Cohen asked how the other Board members felt about allowing a 7 foot setback, just in case any issues arise with the accuracy of the plot plan. Mr. Gildea said is he is slightly troubled that so many houses in the area are so close to each other, and he wouldn't want to be part of adding to that, but he thinks that a structure pushing no more than 50% into the setback seems reasonable, so he would be comfortable with no more than a 7.5 foot setback.

There was discussion about whether the Board could or should require some sort of interim plot plan to ensure that the dimensions will be followed. Mr. Cohen said that, for the applicant's sake, he doesn't want to drag out the application hearing any longer than necessary and doesn't feel an interim plan would accomplish much; he said the Building Department will require a certified plot plan and will measure based on that.

After further discussion, Mr. Gordon agreed with Mr. Gildea's assessment of 7.5 feet for the allowable setback. Mr. Henning also agreed, stating that the 7.5 number – equaling 50% - makes sense and seems reasonable. Mr. Cohen said that he feels 7.5 feet is in keeping with the requirements of a Special Permit and called for a motion.

MOTION:

Mr. Gildea moved to grant Charles Freni, 31 Hayden Lane, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct garage addition within side yard setback, subject to the condition that it not be any closer than 7 ½ feet to the side yard, as

shown on Exhibits A through F.

Mr. Gordon seconded the motion.

Voting in favor: Cohen, Gildea, Gordon, and Henning

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

Mr. Cohen explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #008-12 – Pamela Brown, Esq., for Serenity Yoga, 363 Great Road, seeks a Special Sign Permit per Article 40.4 Section 3 of the Sign By-Law to split and increase wall sign.

Attorney Pamela Brown greeted the Board and introduced Toni Bradley, the owner of Serenity Yoga, which has recently moved from 18 North Road to the shopping plaza at 363 Great Road. She explained that she is representing Ms. Bradley for a sign request: they are seeking a Special Permit to divide a wall sign into two signs and increase the allowable sign area from a total of 50 square feet to a total of 54 square feet. She referenced the cover letter of her application packet, which explains in detail the proposed sign request (see attachment).

Ms. Brown referenced Article 40.4 Section 3.A.1 of the Sign By-Law, which states:

One (1) sign not to exceed an area equivalent to ten percent (10%) of the first floor front wall area of a business or fifty (50) square feet, whichever is smaller, may be attached to any wall of a building. An increase in area up to twenty percent (20%) of the first floor front wall area may be allowed by Special Permit from the Board of Appeals. Division of the permissible wall sign area into two or more wall signs may be allowed by Special Permit if, in the opinion of the Board of Appeals, such division significantly enhances the appearance of the resulting signage in concert with the architecture of the specific building.

She explained that her calculation for the front wall area of the business is 700 square feet, and ten percent of that would be 70 square feet, but according to the By-Law, they are allowed 50 square feet; therefore, they are allowed one 50 square foot sign, but they hope to divide the wall signs to have one 30 square foot sign on the Great Road side of

the building and a 34 square foot sign on the Pine Street side, where there is already an existing empty 6'x4' sign box. She noted that, although the By-Law does not allow signs above the first floor, this sign box is grandfathered and the applicant can therefore have a sign in that space as of right. Ms. Brown pointed out that there is a freestanding sign on the lot that lists the tenant names, but it is hardly visible because it is shaded by trees. She said she never even knew it was there until she walked to the site this week.

The Board examined photographs of the building and talked about the existing signage at the property. While the Board viewed the photographs, Ms. Bradley explained that when at 18 North Road she generated information that indicated that signage was an important means to attract new clients. There was also discussion that the sign box on the Pine Street side of the building was obscured due to trees and the fact that the building is below the grade of Pine Street and Great Road.

Mr. Henning asked the applicant how she came up with the measurement for the frontage business. Ms. Brown replied that she measured the width of the business space, which is 70 feet, and multiplied it by 10, for the building height. She said that even if that measurement is off by a few feet, it doesn't matter, because the Sign By-Law defers to the "or 50 square feet, whichever is smaller" rule.

Mr. Gildea said that, if the Board were to grant a Special Permit for this application, he was concerned that the Board would be adding permission for additional signage on the premises where such signage was not directly linked to the tenant or unit. Mr. Gildea also noted that because the special permit runs with the land it really benefits the landlord and the building and that granting such a request will open the door to requests for additional signage from other tenants.

There was some discussion as to whether or not it would be possible to add a condition on the Special Permit so that this relief only runs with this particular tenant, and not directly with the building. He asked whether that would be possible or legally binding since a special permit typically runs with the land. Ms. Brown said it would be binding if there were no objections or appeals to the Special Permit. She added that they would be amenable to such a condition. There was further conversation about the signs being granted to this tenant as opposed to being available for future tenants.

Mr. Cohen opened the hearing to the public.

Mr. Gordon said he is concerned about the notion of having a building with five tenants and six signs. He asked whether any other tenants at this property have two signs. Ms. Brown said that D'Angelo's and the chiropractor each have two signs. Mr. Gordon asked whether both of those tenants front on both sides of the building. Ms. Brown said they do.

Mr. Cohen asked whether the Great Road sign would be illuminated. Ms. Brown said it would not. Mr. Gordon suggested that the applicants turn off the illumination on the Pine Street sign, not only to stay consistent with the non-illuminated Great Road sign but also

to have one less illuminated sign on the building. Ms. Brown said they would be happy to make that compromise. The Board talked about the notion of not illuminating the Great Road sign and keeping the illumination for the Pine Street sign.

Mr. Gildea asked whether the applicant minded stating why she switched locations. Ms. Bradley replied that she simply needed more space. Mr. Gildea asked how long she has been at the new location. Ms. Bradley said she has been there since the middle of February. Mr. Gildea asked whether she knew about the signage issues on this building at the time she leased the space. Ms. Bradley said she talked to the realtor and the landlord at that time and both indicated that the two signs wouldn't be a problem; she also talked with Christopher Laskey, the Code Enforcement Director, and at the time he indicated that the signs would not be an issue either. It was only when she submitted the Sign Permit applications and Mr. Laskey went through the exact wording of the By-Law that he realized the two signs might be an issue, as the business doesn't technically front on two streets, even though the building does.

Mr. Gildea asked attorney Brown, with respect to the specific requirements of the sign bylaw, to identify why the division of the signage would significantly enhance the appearance of the resulting signage in concert with the architecture of the specific building. Ms. Brown answered that the applicant could, as matter of right, construct a 50 foot sign that was not in character with the building and therefore applicant's request to divide the signage is a better solution.

With no further comments or questions from those in attendance, Mr. Cohen closed the public hearing.

DELIBERATIONS:

Mr. Cohen said that he would support this application, as he understands the applicant's need to have her business visible and he also believes that one more sign on the building won't be particularly noticeable. He asked how the other members felt about it, and whether a condition stating that the Special Permit will only run with this tenant is enough to satisfy the Board that this application is not injurious or detrimental to the neighborhood and does not derogate from the intent and purpose of the Sign By-Law.

Mr. Gildea said that he is struggling a great deal with this application, because he is not comfortable allowing additional signage to a building that already has far too much signage under the current by-law. He said he feels that an application for yet another sign, in addition to the one the tenant is allowed, *does* derogate from the intent and purpose of the By-Law. He said that he sympathizes with the applicant and understands the desire to have the business be visible, but he feels that having one sign on Great Road will give the applicant the necessary visibility. He pointed out that the applicants have already stated that signs on the Pine Street side of the building are hardly noticeable as it is, so it isn't necessary for the Board to grant two signs; the sign on Great Road would be sufficient.

There was further discussion about the size and dimensions of the two proposed signs.

The Board members talked about businesses that front on two sides of the building. Mr. Henning noted that there are some tenants at the property with two signs, so this Special Permit would not be entirely unprecedented. Mr. Gordon said that the only businesses that have two signs are also the only two businesses that front on both sides of the building.

As a point of clarification, Ms. Brown noted that the empty sign box on the Pine Street side will end up with a tenant sign inside it, so it isn't a question of the Board preventing extra signage on the building; it is only a question of what business will be shown on the extra sign.

The Board talked about adding or subtracting signs from the building, and what could be done to improve the look of the structure. Mr. Cohen said that if this Special Permit is granted, another tenant may just take up the empty sign box anyway, so denying the application won't necessarily help make the building look better. Mr. Gordon said that is a nice thought but the applicant has already stated that the building is full, so there won't be any empty sign boxes. Mr. Gildea said the sign on the Pine Street side is also not visible from the street so no one would want the space anyway.

Mr. Gordon said that there is a freestanding sign on the lot, and perhaps the landlord or the owner of the building should be asked to remove the trees around it so that it becomes visible. Mr. Cohen said that the Town may look unfavorably on removing the trees around the freestanding sign, so that may be a problem not only for the owner but for all the tenants who cannot be seen listed on it. Mr. Gordon stated that whether the sign is visible is not the Board's concern, because the fact remains that there is yet another sign at the property in addition to all the signage on the building. He said that the freestanding sign could be made more visible and a sign on Great Road could be erected, so he doesn't see this as a case where the Board is doing a business a great disservice by not allowing a second sign, because he feels there are other options that can solve the problem before adding yet another sign to the building.

Mr. Gildea said he feels that an illuminated sign on the second floor of the building is simply inconsistent with the intent of the Sign By-Law, and he is having trouble supporting this application.

Mr. Henning said he is on the fence with the application and can see both sides of the argument, but there is a freestanding sign on the property and the applicant is allowed a sign on the Great Road side of the building, so ultimately it becomes a question of how many signs are really necessary.

Mr. Cohen said the Board members have all a chance to make their opinions clear. He called for a motion, with the condition that the Special Permit will run with this particular tenant.

MOTION:

Mr. Gildea moved to grant to Pamela Brown, Esq., for Serenity Yoga, 363 Great Road, a Special Sign Permit per Article 40.4 Section 3 of the Sign By-Law to split and increase wall sign, subject to the condition that the Special Permit apply only to this tenant/business, and as specifically set forth in Exhibits A through F.

Mr. Henning seconded the motion.

Voting in favor: Cohen and Henning

Voting against: Gildea and Gordon

Abstained: None

The motion did not carry, 2-2-0.

Ms. Brown said that she is disappointed that the Board seemed to be in favor of this application during the public hearing and then two members changed their minds during the deliberations. She said they do of course have the right to do that but it is disheartening that they weren't given an opportunity to withdraw the application. She thanked the Board members for their time and consideration.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION # 028-11 – CONTINUATION – Lutheran Church of the Savior, 426 Davis Road, seeks to appeal the Building Inspector's decision to require a buffer of trees along property line.

Mr. Cohen read into the record a letter from Attorney Douglas Deschenes, dated September 21, 2011, requesting a continuation to the October 27, 2011 meeting date. He called for a motion to continue the application.

MOTION:

Mr. Gildea moved to grant the request for a continuation for Lutheran Church of the Savior, 426 Davis Road, seeking to appeal the Building Inspector's decision to require a buffer of trees along property line, to October 27, 2011 at 7:30 PM.

Mr. Gordon seconded the motion.

Mr. Gildea said he is very disappointed that the applicants have requested a continuation, because the Board gave them two months to work with the neighbors to get this tree issue taken care of, and it is evident that they waited until the very last minute. He asked whether the Board wanted to consider denying this continuation and vote on the application instead. Mr. Cohen said that the Board has never denied an applicant's request for a continuation, and he would be uncomfortable starting now.

Mr. Gordon said he is also disappointed, especially since several abutters showed up at the beginning of the meeting tonight and had to be informed of the continuation; he said that these concerned residents took the time to adjust their schedules for this meeting, and now the Church has asked for a continuation at the last minute. It was suggested to amend the motion to state that the Board will not allow any more continuations for this application. Mr. Cohen said he supports such a condition, but doesn't want to make the condition so open-ended, because the Board may want or need another continuation on this application in the future after the applicants are heard again; he suggested that the condition state that any further continuations be requested in person by the applicants.

AMENDED MOTION:

Mr. Gildea moved to grant the request for continuation to Lutheran Church of the Savior, 426 Davis Road, seeking to appeal the Building Inspector's decision to require a buffer of trees along property line to October 27, 2011 at 7:30 PM, with the condition that any further continuation be requested in person.

Mr. Henning seconded the motion.

Voting in favor: Cohen, Gildea, Gordon, and Henning

Voting against: None

Abstained: None

The motion carried unanimously, 4-0-0.

BUSINESS MEETING:

The Board members talked amongst themselves and with Selectman Liaison Walter St. Onge about the issue of recusing oneself from a meeting, and when it is or is not appropriate. Mr. Cohen said there are certain times when, for professional reasons, a Board member is not only expected but required to recuse him or herself, but ultimately, in most cases, a Board member should recuse him or herself any time he or she feels uncomfortable voting on an application due to any kind of conflict – personally or professionally – with an applicant. He said that, as Chair, he would try not to ever encourage any member to vote if it made him or her uncomfortable.

The Board talked about the upcoming Sign By-Law review committee.

MOTION:

Mr. Gildea moved to adjourn the meeting.

Mr. Gordon seconded the motion.

Voting in favor: Cohen, Gildea, Gordon, and Henning

Voting against: None

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Abstained: None

The motion carried unanimously, 4-0-0.

The meeting adjourned at 9:35 PM.



Jeffrey Cohen, Chair 10/13/11
Date

Respectfully Submitted,

Scott Gould
ZBA Assistant

Attachments:

- Cover letter to Serenity Yoga application packet, signed and dated by Attorney Pamela Brown on August 31, 2011
- Letter from Attorney Douglas Deschenes, on behalf of the Lutheran Church, signed and dated September 21, 2011